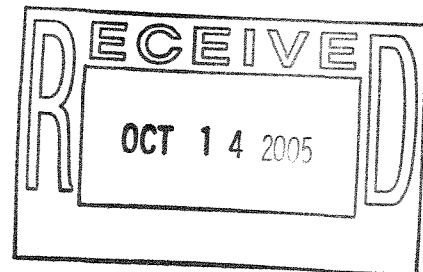




**Daniela's Cantina**

47 Beacon Street • Framingham, MA 01701

(508) 875-1550



October 14, 2005

Mr. Don Johnson  
Town Manager  
Town of Acton  
472 Main Street  
Acton, MA 01720

Dear Mr. Johnson,

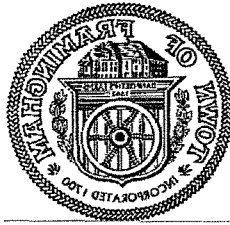
I understand from my conversations with Tracy Boyd that you expressed an interest in seeing the Town of Framingham Policy on Alcohol Licenses. Please believe that I am offering you this policy not as an effort to be presumptuous, but merely as a matter of good will. I also understand that what happens in Framingham has little or no impact on what happens in Acton.

I am hopeful that we can reach a reasonable resolution to your concerns expressed in your letter of October 4<sup>th</sup>.

We look forward to meeting with you on October 17<sup>th</sup>.

Very Truly Yours,

Ken Bender  
Vice-President and Treasurer Cantina, Inc.



**Town of Framingham  
Board of Selectmen**

## **Policy on Alcohol Licenses**

**Issue date:** June 17, 1996

**Type of policy:** New ( )      Amended (x)

**Effective date:** January 7, 2002

**Level:** Department ( )      Division ( )      Town Wide (x)

### **Policy Statement**

In view of the current state of liquor licenses across town and the dwindling supply of new licenses available, the Board deems it in the public interest to encourage variety, uniqueness, and greater choice for the public in liquor establishments and vendors.

This policy exists solely for the assistance of the Board of Selectmen, the public, and prospective liquor license applicants, to enable them to work together to accomplish the goal of greater choice. It is understood that many of these considerations are subjective and will be interpreted and given weight according to public demand and the judgment of the Board of Selectmen. Prospective applicants are advised that meeting any or all of the considerations will not guarantee approval of a license. This policy is not intended to and does not create or supersede any rights already controlled by any relevant laws or regulations. It also provides the applicant with the penalty structure to be followed if liquor violations occur. It should be emphasized that the purpose of this policy is primarily preventative, not punitive. It is the Town's position that license holders and their employees are in the best position to prevent alcohol abuse originating on the licensed premises.

The Board of Selectmen takes seriously the responsibility of granting liquor licenses and expects all applicants to adhere to the policy requirements relative to security precautions.

### **References**

M.G.L., Chapter 138

## **Special Terms**

None.

## **Policy Description**

### **I. General**

1. The applicant must meet the requirement of Massachusetts General Laws, Chapter 138, and any other applicable town or state laws.
2. All employees serving the public are required to have successfully completed an alcoholic beverage training program such as TIPS program or its equivalent. Periodic retraining programs for employees should also occur. At a minimum, in-house training similar to that received at the formalized training classes will be required.
3. Special identification cards shall be required for persons who are employed in the direct sale and service of alcoholic beverages. These will be issued through the Framingham Police Department. Persons so employed when this policy is adopted shall register within six months after that date. Persons who are employed after the date of adoption must register two weeks after employment.
4. Wrist- Bands are not allowed as a method to identify customers to be served.
5. "Happy Hours" are prohibited as outlined in section E.
6. Cover charges are not allowed.
7. The licensing of liquor establishments and vendors, and what constitutes the public convenience in Framingham, will be subject to the informed discretion of the Board of Selectmen.

#### **A. This Policy Applies To:**

1. License transfers involving a change of location, ownership, or business for example, (change of type of restaurant).
2. New Licenses.
3. One Day or Special Licenses.

#### **B. Considerations for Approval of New License or Transfer:**

The Board will consider any or all of the following that can be reasonably offered in support of a particular license application:

6. The applicant is a qualified veteran's organization and seeks a club license.
7. The applicant proposes an establishment that offers a regular forum for music and musicians to play and get exposure for their work.
8. The applicant offers variety, or uniqueness, in its proposed establishment or shop, in contrast to what exists in Framingham at the time of the application. For example the Board of Selectmen have a commitment to revitalization of downtown. A unique "white tablecloth" restaurant would be encouraged.

9. The applicant proposes an establishment that offers a substantial economic benefit to the Town of Framingham.
10. Proposals for establishments to be located in shopping malls or high density retail areas, either as new licenses or transfers, are discouraged, if they duplicate what is already located there.

**C. One Day or Special Licenses:**

The following types of organizations and individuals are eligible for one-day alcoholic beverage licenses under this policy. Other organizations or individuals may submit applications for consideration.

- Civic or municipal organizations
- Commercial establishments
- Fraternal organizations
- Non-profit organizations
- Non-profit unincorporated associations
- Individuals holding social events
- Unincorporated groups or organizations not engaged in the sale for profit of alcoholic beverages.
- Service clubs
- Veteran's organizations

**CRITERIA FOR APPROVAL:**

The following matters will be taken into account in approving one-day licenses:

1. **ADMISSION AGE:** The Board will not deny a one-day license for a function at which individuals to whom alcoholic beverages may not be supplied are present, but will require that sufficient trained servers are present to assure compliance with the laws governing the sale or furnishing of alcoholic beverages to such persons.
2. **FREQUENCY:** The Board considers that one-day licenses are to be issued primarily to applicants sponsoring functions that are not held more than once annually. Except for applicants that are in the business of catering or accommodating individual functions, one-day licenses are not intended as an alternative to an annual license.
3. **ACCEPTANCE OF CONDITIONS:** Acceptance of a one-day license under this policy will be deemed to be an acceptance of the conditions of the license and an agreement with the Town of Framingham to be bound thereby.

**CONDITIONS TO BE CONTAINED IN ONE-DAY LICENSES:**

1. **CERTIFICATION OF SERVICE PROVIDERS:** All persons engaged in furnishing alcoholic beverages at a licensed function, whether by sale or without charge, including servers, must be certified as having completed an approved alcoholic beverage training program and have evidence of such certification in their possession. Commercial caterers and accommodators must be registered with the Framingham Police Department.
2. **NUMBER OF SERVICE PROVIDERS:** The number of bartenders and servers shall be recommended to the Town Manager by the officer of the Framingham Police Department designated to review applications for one day licenses and shall be determined by the Town Manager as appropriate for the number of persons estimated to be in attendance and the nature of the event. For functions at which attendance is by invitation only, the number of persons included in the invitations shall be used.
3. **HOURS OF SERVICE OF ALCOHOLIC BEVERAGE:** The hours of sale and service shall not exceed those permitted for retail pouring licenses. The "last call" must occur not later than 15 minutes before the expiration of permitted service hours. The function need not end at the expiration of service hours, but no alcoholic beverages may be sold, served or consumed on the licensed premises or in adjacent premises such as parking or recreational areas after that expiration time.
4. **NUMBER OF PERSONS ON PREMISES:** The number of persons may not exceed the occupancy limits allowed by law for the premises on which the license will be exercised.
5. **POLICE DETAIL:** The number of officers, if any, and the hours during which a police detail will be required within the licensed premises and, if required, for orderly parking and traffic control will be recommended by the Police Department. Generally those hours will include the entire duration of the function, including after service hours. The factors to be considered include the location of the premises, availability of on-site parking, the number of persons estimated to be in attendance and the time and duration of the function.

#### **ADDITIONAL PROVISIONS:**

Departmental Approvals: the Board of Health and the Building Inspection Department must approve the licensed premises, including, where applicable, food service equipment. For any function to which the general public will be admitted, the Human Relations Commission must approve the licensed premises as meeting handicap accessibility requirements.

Neighborhood Impact: The applicant or such other person designated by name, address and local telephone number in the application will be responsible for the orderly conduct

of the function for which the license is issued. Consumption of alcoholic beverage outside of the structure within which the licensed function is to be held will not be permitted. Music, noise, or other function related activities must not create an undue imposition upon any adjacent residences. Police detail officers will be instructed to respond appropriately to complaints. Such response may include an order to terminate the event or otherwise limit the offending activity.

Submission of Applications: Applications must be complete with all necessary endorsements when submitted to the Licensing Office and shall be submitted sufficiently in advance of the day upon which the licensed function is to begin so that it can be reviewed and approved. Applicants should note that if an application is denied by the Town Manager, and review by the Board is sought, the application must have been submitted sufficiently in advance of the event to allow review of the denial at a regular meeting of the Board as provided below.

When submitted each application must be endorsed with the approval of the Board of Health, the Building Inspection Department, the Human Relations Commission (as to handicap accessibility if required) and the Police Department (as to police detail required and number recommended of bar tenders and servers). The Town Manager is hereby authorized to approve on behalf of the Board one-day licenses meeting the requirements of this policy. Applications that are not approved by the Town Manager may be brought to the Board for approval and shall be accompanied by the Town Manager's summary of reasons for declining approval. The office of the Board must receive such requests for Board approval not later than noon on the Tuesday of the calendar week before the day on which the licensed function is to begin.

License Application Fee:

No fee will be charged for one day licenses for single occurrence events such as weddings, charitable fund raisers, etc whether or not the application is submitted by the real party in interest or by a caterer or accommodator or other commercial provider. One day licenses for events associated with commercial activities such as business promotional activities, business meetings, conventions, trade association events, etc will be charged a fee of \$50.00 for each license application.

**A. Change of Manager**

An application for change of manager must be filed with the Board of Selectmen at least two (2) weeks before the proposed effective date of the change, unless the approved manager has terminated his or her employment without prior notice to the licensee. In that case, by the close of the next business day following the termination of employment the licensee must notify the Board of the name of the person who will discharge the duties of manager pending selection and approval of a new manager.

If the employment of the approved manager is terminated by the licensee, or if the approved manager is replaced, transferred, or for other reason due to action by the licensee is no longer serving as manager, the licensee must file an application for

change of manager at least two weeks before the action is taken by the licensee and must obtain approval of the application before changing the manager.

If circumstances other than those stated above require a licensee to make a change in manager without timely filing the required application, the licensee shall file the application at the earliest practicable time and must include a detailed statement of the circumstances. If the Board finds that the circumstances justify the non-compliance, no penalty will be imposed. If the circumstances are not found to be sufficient, the Board may impose a penalty of suspension that may be up to one day of suspension for each day of unjustified non-compliance.

**B. Responsibilities of Manager:**

1. The Board of Selectmen regards the Manager of licensed premises as the principal representative of the licensee and as having full authority and control of the licensed premises and of the conduct of all business therein relative to alcoholic beverages, all as provided in General Laws c. 138, § 26. In addition, an Assistant Manager or other suitable managerial employee capable of fulfilling the duties of Manager must be listed on the license by the Licensee. This will allow for continuity of the Manager position, should either the Manager or Assistant Manager positions become vacant during the course of the year, while the Licensee files an application for Change of Manager with the Board.
2. Without limiting the scope of the previous subsection, the Board will hold the Manager responsible for the following:
  - a. Careful selection of qualified employees of the licensed business, including servers, clerks and persons who are engaged with the public in any capacity.
  - b. Training of employees in all matters relating to the sale or service of alcoholic beverages.
  - c. Assuring that employees serving the public have successfully completed the alcoholic beverage training program and possess a valid special identification card referred to in Section II. Paragraph 3 of this policy.
  - d. Reporting to the Board or its designated representatives all instances of attempted purchases or procurement of service of alcoholic beverages by minors, including attempts to gain access to premises upon which alcoholic beverages are served and from which minors are excluded, and appropriate action taken by the licensee in response thereto. Such appropriate action shall include (1) reporting to the Registry of Motor Vehicles instances involving possession or use of a false, forged or counterfeit license to operate motor vehicles or identification card issued by the Registry of Motor Vehicles; (2) confiscation of liquor identification cards or motor vehicle operator's license presented by the minor; and (3) if a purchase was made or service was procured, the name of the licensee's employee participating therein.
  - e. Enforcement of the liquor laws and the Alcohol Policy of the Town of Framingham with respect to the operation of the licensed business.

3. Except as provided herein, the Manager must be a full time employee or a corporate officer of the licensee, must be engaged exclusively in the management of the licensed business, and must be a qualified seller or server of alcoholic beverages registered with the Framingham Police Department. The Manager must be on the licensed premises regularly in the course of business, consistent with the permitted hours of operation. When the Manager is not upon the premises, the person actually in charge of the business must be a qualified seller or server of alcoholic beverages registered with the Framingham Police Department and designated by the approved Manager to have charge of the business in the Manager's absence. When the Manager is not upon the premises a method of contacting the Manager promptly must be arranged so that the Manager can be reached at all times by the person designated to be actually in charge of the premises.

The provisions of the first sentence of this sub-section 3 shall not apply to any licensee holding a license issued under Mass. Gen. Laws c. 138, Section 12 to a veterans organization or to a licensee holding a license issued to a club under Mass. Gen. Laws c.138, Section 17.

4. Any person who is actually in charge of the business when the Manager is not on the premises must be qualified as a seller or server of alcoholic beverages in accordance with the policy of the town. The Manager will continue to be responsible for the operation of the business whether or not on the premises.
5. Failure of the Manager to comply with this policy or to properly discharge the duties of manager may result in removal as manager or suspension or revocation of the license as may be appropriate to the circumstances.

#### **A. Distribution of Policy:**

This policy, in its most updated form, shall be mailed to all licensees with their annual renewal application and with each application for change of the licensed manager.

## **II. Procedure**

The applicant should submit a letter to the Board of Selectmen outlining the proposal and including a request for a hearing with the Board. The applicant should request to be placed on the agenda and publish a public notice of the date selected for the hearing in accordance with the statute. At the public hearing the Board will consider the application for a liquor license and the input of any interested members of the public. The Board will then consider the application and respond in a timely manner to the applicant.

## **III. Penalty Structure:**

### **C. A. Purpose**

The purpose of this penalty procedure is to improve the ability of the Board of Selectmen to prevent alcohol abuse and violation of the liquor laws of the Commonwealth. This procedure will help to achieve reasonable uniformity in the



imposition of penalties and to avoid confusion in the minds of the public, patrons and licensees due to a lack of understanding of the consequences of violating the liquor laws and the terms of liquor licenses.

#### **A. General Statement of Policy**

4. No licensee shall permit any illegality to occur on the licensed premises. The manager shall at all times maintain order and decorum on the premises and in the immediately surrounding area of the premises and shall co-operate with Town Officials in ensuring safe and orderly facilities.
5. All violations of the liquor laws and the terms of liquor licenses are to be reported to the Board by the Police Department or by any licensee or manager that becomes aware of an offense involving the licensed premises within two weeks of said violation.
6. Penalties for offenses will be imposed so as to promote compliance with the Town's objective of preventing future offenses and imposing appropriate penalties for offenses that have occurred.
7. The nature and severity of the penalties will be decided according to the nature of the offense and the presence of mitigating or aggravating circumstances that are described in this policy.
8. All offenses by licensees will result in the imposition of a penalty of some degree. This will impress upon licensees, managers, and servers their responsibility for ensuring compliance with this policy, for prevention of offenses and for compliance with the terms of licenses and the liquor laws of the Commonwealth.
9. Penalties may consist of any one or more of the following as appropriate: revocation of license; suspension of license; criminal prosecution of offenders, including customers and patrons as deemed appropriate by the police chief; and mandatory participation in alcohol abuse and offense prevention programs as more fully described in Section I.
10. The Police Department is authorized to negotiate with any person the terms upon which the Police Department will recommend to the Board that an offense be resolved. Any such negotiated recommended resolution must be in writing, signed by the manager or license holder charged with the offense and approved by the Police Chief. The recommendation must include a statement detailing the facts determined in the Police Department investigation. The recommended resolution is not binding unless and until approved by the Board.
11. If the Police Department and the manager and/or license holder charged can not agree on a recommended resolution, the Police Department will make any additional investigation it deems necessary for a complete presentation of the facts and will file a written report with the Board.
12. The Police Department will give a copy of that report to the manager and/or license holder charged if requested before the hearing on the offense.
13. The penalty guidelines stated in this policy are intended to create a clear and definite expectation as to the penalty the Board will impose if a hearing is held on

any offense. The Board will refer to these guidelines by deciding whether to approve a negotiated recommended resolution.

14. If the Board does not approve a negotiated recommended resolution a new hearing will be scheduled. The person charged may withdraw the consent to the recommendation and contest all relevant matters at the hearing including any matters which had been admitted in the statement of facts in the proposed recommended resolution.
15. The Police Department and the Board will maintain a public record of offenses and their disposition that will be indexed according to the licensee/ manager, server and purchaser involved.

#### **A. Determination of Penalties**

Penalties will be determined according to the following procedure.

4. The base level offense(s) will be determined from those offenses described in Section D.
5. Adjustments according to the presence of factors that warrant an increase in the penalty ("aggravating factors") described in Section E. or decrease ("mitigating factors") described in Section F. will be considered.
6. Adjustments according to the number of violations involved in the particular offense will be considered.
7. Adjustments according to the offender's acceptance of responsibility described in Section F.2. will be considered.
8. Increases according to the number and circumstances of prior violations and penalties previously imposed upon the offender described in Section H. will be considered.
9. Adjustments according to the consequences of the base level violation described in Section I will be considered.

#### **A. Base level offenses**

6. Sale outside of permitted hours (Gen. Laws ch. 138 Sec. I 2) All references are to sections of Gen. Laws ch. 138 unless otherwise noted
7. Purchase by person under age 21 (Sec. 34A)
8. Employment by licensee of person under age 18 for direct handling or selling of alcohol
9. Sale or delivery to a person under age 21 for own use or for use of another. (Sec. 34)
10. Sale to an intoxicated person. (Sec. 69)
11. Hindering or delaying investigation. (Sec. 63A)
12. Failure to post notice of penalty for driving under the influence and driving while drinking from open container of alcoholic beverage. (Sec. 34D)
13. Failure to comply with section 204 CMR 4.03 of the ABCC regulations as follows:
  - (c) No licensee or employee shall offer or deliver any free drinks to any person or group of persons:

- (d) deliver more than two drinks to one person at one time;
- (e) sell, offer to sell or deliver to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public;
- (f) sell, offer to sell or deliver to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public;
- (g) sell, offer to sell or deliver drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public;
- (h) sell, offer to sell or deliver malt beverages or mixed drinks by the pitcher except to two or more persons at any one time;
- (i) increase the volume of alcoholic leverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week; encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes.

#### **E. Aggravating Factors**

- 2. Failure to request identification card, operator's license or passport.
- 3. Juvenile appearance of purchaser.
- 4. Use of altered identification.
- 5. Refusal to cooperate in investigation.
- 6. Multiple sales on same occasion.
- 7. Quantity of beverage sold.
- 8. Staff not suitably trained.
- 9. Unregistered server.
- 10. Server unable to provide Server ID card upon request.
- 11. Under age server.
- 12. Violations of other laws such as: prostitution, solicitation, drugs gambling, disorderly conduct, cigarette sales to minor
- 13. Concealing violation.
- 14. Furnishing false information to investigator.
- 15. Exceeding lawful capacity of premises.
- 16. Intimidating or coercing witnesses or attempting to do so.
- 17. Offense occurring while under suspension of penalty.
- 18. Sale occurring while license suspended.
- 19. No participation in Board's Prevention of Alcohol Abuse Program.

#### **A. Mitigating Factors**

- 1. Reasonable reliance upon an identification card or operator's license for proof of identity or age. (Gen. Laws ch. 138 Sec. 34B)
- 2. Acceptance of responsibility as shown by;

- Substantial and voluntary assistance offered in investigation.
- Public acknowledgment of responsibility
- Agreement to participate in training program by licensee, manager, and servers.
- Prompt notice of decision not to contest charge and agreement to proposed recommended resolution.
- Licensee agreement to participate in an effective program to detect and prevent future offenses.

#### **B. Previous Violations**

1. Same offense.
2. Different offense.
3. Recent prior offense.
4. Same manager.
5. Same server.
6. Severity of prior penalty.
7. Offense while under suspension of prior penalty.

#### **C. Consequential Misconduct Related to an Offense**

1. Operating under the influence.
2. Causing personal injury.
3. Causing property damage.
4. Disturbance of the peace.
5. Domestic violence.

#### **D. Imposition of Penalties or Other Outcomes**

The Board will impose penalties for offenses consistent with this policy. Offenders may expect one or more of the following consequences as appropriate in the judgment of the Board.

1. Suspension of license for a stated number of days and specified dates.
2. Suspension of license for a stated number of days and specified dates with a portion of the suspension deferred upon condition that no further offenses occur within a specified period of time and that licensee waives right to hearing upon such further offense.
3. Revocation or suspension of registration of server for a specified period of time after a due process hearing for cause, and thereby limiting or preventing the employment of a server by a licensee within the Town.
4. Mandatory participation in prevention programs by licensee/ manager and server as appropriate.
5. Appropriate publicity of offense and disposition.

#### **E. Reporting of Violations and Penalties Imposed**

The Board shall receive bi-annual reports from the Police Department and/or Licensing Administrator detailing violations of this policy from the date of the previous reporting period, and the penalties imposed by the Board for said violations. Reports shall be submitted to the Board no later than May 1 and November 1. The Board will use these reports to analyze what factors are commonly associated with violations, such as over-serving, underage serving, failure of serving training or registration, etc. This process will allow the Board to periodically review this policy and recommend any areas of the policy that need to be amended.